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RICHARD W WIEKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

1 J. WYNNE HERRON, ESQ., SBN 71192
2 JOSEPH CLAPP, ESQ., SBN 099194
3 HERRON & HERRON
4 18360 Sonoma Highway
Sonoma, California 95476-4328
Telephone: 707/933-4430
Facsimile: 707/933-4431
joeclapp@herron-herron.com

6 Attorneys for Plaintiffs
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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

11 JAVIER MUNOZ, an individual; STEVEN)
12 TILLER, an individual; KEVIN LAY, an)
individual; JAMES WYNN, an individual;)
individually, on behalf of the general public, and)
on behalf of all others similarly situated,)

Case No.

15 Plaintiffs,)
vs.)
17 UPS GROUND FREIGHT, INC., a business)
entity form unknown; UPS FREIGHT, a business)
entity, form unknown; OVERNIGHT)
19 TRANSPORTATION COMPANY, a business)
entity, form unknown; OVERNIGHT)
CORPORATION, a business entity, form)
unknown; MOTOR CARGO, a business entity,)
form unknown,)

607-00970 MJU
COMPLAINT FOR WAGES

CLASS ACTION

JURY TRIAL DEMANDED

BY FAX

25 Plaintiffs allege:

26 JURISDICTION

27 1. Plaintiff Javier Munoz is a competent adult who was employed as a linehaul
28 truck driver operating out of defendants' terminal located in Newark, California.

1 2. Plaintiff Steven Tiller is a competent adult who was and is employed as a
2 linehaul truck driver operating out of defendants' terminal located in Fresno, California.

3 3. Plaintiff Kevin Lay is a competent adult who was and is employed as a
4 linehaul truck driver operating out of defendants' terminal located in Fresno, California.

5 4. Plaintiff James Wynn is a competent adult who was and is employed as a
6 linehaul truck driver operating out of defendants' terminal located in Fresno, California.

7 5. Each of these named plaintiffs is domiciled in California.

8 6. Defendants UPS Ground Freight, Inc., UPS Freight, Overnite Transportation
9 Company, Overnite Corporation, and Motor Cargo are business entities, form unknown, which
10 operate one of the largest motor carriers of freight in the nation. Based on information and belief,
11 plaintiffs allege that defendants UPS Ground Freight, Inc. and UPS Freight have their principal places
12 of business in the State of Virginia.

13 7. At all relevant times, each defendant was the agent of each other defendant,
14 and each defendant was acting within the course, scope and authority of such agency. At all relevant
15 times, each defendant authorized and ratified each of the actions of each other defendant. At all
16 relevant times, each defendant was the alter ego of each other defendant.

17 8. The aggregated claims of the individual class members, exclusive of interest
18 and costs, exceeds the amount of \$5,000.000.00. This court has jurisdiction of this class action
19 lawsuit pursuant to 28 U.S.C. §1332(d)(2)(A).

CLASS ALLEGATIONS

20 9. At all relevant times, defendants have maintained a policy about the payment
21 of wages when linehaul drivers are delayed from beginning their routes from terminals until after
22 their planned departure times. In pertinent part, the policy states that defendants will not pay a driver
23 any wages for the first hour that the driver waits to depart from a terminal.

24 10. The individual plaintiffs bring this action for themselves, for the general
25 public, and for all persons similarly situated. For purposes of the first cause of action the class of all
26 persons similarly situated is composed of all of defendants' current or former linehaul drivers. This
27 class will be referred to as the "nationwide" class. For purposes of the remaining causes of action, the
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1 subclass of all persons similarly situated is composed of all of defendants' current or former linehaul
2 drivers who reside in California. This subclass will be referred to as the "California" subclass.

3 11. The identities of these linehaul drivers are readily ascertainable from
4 defendants' time and payroll records. The dates and times that they departed from terminals are
5 readily ascertainable from defendants' records. The nationwide class is composed several thousand
6 individuals, and the California class is composed of more than 100 individuals. The numbers of
7 persons in the two classes are so large that joinder of all such persons is impracticable, and the
8 disposition of their claims in class actions would benefit the parties and the Court.

9 12. There is a well-defined community of interest in the questions of law and fact
10 respecting the parties to be represented, and these questions predominate over individual issues.
11 Proof of a common or single state of facts will establish the right of each member of the classes to
12 recover.

13 13. The claims of the named plaintiffs are typical of the claims of the classes.

14 14. The named plaintiffs will fairly and adequately protect the interests of the
15 classes. The named plaintiffs have no interests which are antagonistic to the interests of the classes.
16 Class counsel is well-qualified to conduct this litigation.

17 15. The prosecution of separate actions by individual members of the classes
18 would create a risk of adjudications with respect to individual members which would, as a practical
19 matter, dispose of the interests of the other members not parties to the adjudications or substantially
20 impair or impede their ability to protect their interests.

21 16. The defendants have acted on grounds generally applicable to the classes,
22 thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to
23 the classes.

24 17. The questions of law or fact common to the members of the classes
25 predominate over any questions affecting only individual members. A class action is superior to any
26 other available method for the fair and efficient adjudication of this matter.

27 / / /
28 / / /

1 18. Individual members of the classes have little interest in individually
2 controlling the prosecution of separate actions because the amount of attorney's fees necessary to
3 prosecute individual claims would likely dwarf the amounts that might be recovered. There is no
4 known litigation yet commenced concerning this controversy. It is desirable to concentrate this
5 litigation in this forum because defendants' obligations and liability to the named plaintiff Javier
6 Munoz arose out of his employment in Alameda County, California. There are no known unusual
7 difficulties likely to be encountered in managing these class actions.

FIRST CAUSE OF ACTION

(Nationwide Class)

[Quantum Meruit - Delay Time]

19. Plaintiffs incorporate paragraphs 1 through 18 as though fully set forth herein.

20. The class members frequently performed services for defendants by waiting at terminals after their planned departure times. Defendants did not pay the class members for the time they waited. Defendants owe the class members the reasonable value of these services. Reasonable value is the class member's normal hourly pay rate multiplied by the hour that the class member waited.

WHEREFORE, plaintiffs pray for judgment against defendants as hereinafter set forth.

SECOND CAUSE OF ACTION

(California Subclass – Delay Time)

[Business & Professions Code §17200 et seq.]

21. Plaintiffs incorporate paragraphs 1 through 20 as though fully set forth herein.

22. The California subclass members frequently performed services for defendants by waiting at defendants' terminals after their planned departure times. Defendants did not pay the California subclass members for the first hour that they waited. Defendants owe the California subclass members the reasonable value of these services. This reasonable value is the California subclass member's normal hourly pay rate multiplied by the fraction of the hour that the subclass member waited.

1 WHEREFORE, plaintiffs pray for judgment against defendants as hereinafter set
2 forth.

3 **THIRD CAUSE OF ACTION**
4 (California Subclass – Rest Period Time)
5 [Business & Professions Code §17200 *et seq.*]

6 23. Plaintiffs incorporate paragraphs 1 through 22 as though fully set forth herein.
7 24. Defendants frequently failed to pay the California subclass members for the
rest period time mandated by California Industrial Welfare Commission Wage Order 9, Section 12.
8 Defendants owe the California subclass members the reasonable value of these services. This
9 reasonable value is the California subclass member's normal hourly pay rate multiplied by the
10 fraction of the hour that the subclass member should have taken as rest breaks.

11 WHEREFORE, plaintiffs pray for judgment against defendants as hereinafter set
12 forth.

13 **FOURTH CAUSE OF ACTION**
14 (California Subclass)
15 [Violation of Labor Code §226.7]

16 25. Plaintiff incorporates paragraphs 1 through 24 as though fully set forth herein.
17 26. Defendants frequently failed to provide rest periods to California subclass
members as required by Wage Order 9, Section 12 of the California Industrial Welfare Commission.
18 27. Defendants frequently failed to pay the California subclass members one
additional hour of pay for each work day that defendants failed to provide the rest periods.

19 WHEREFORE, plaintiff prays for judgment against defendants as hereinafter set
20 forth.

21 **FIFTH CAUSE OF ACTION**
22 (California Subclass)
23 [Labor Code §226 Penalties]

24 28. Plaintiff incorporates paragraphs 1 through 27 as though fully set forth herein.
25 / / /
26 / / /
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1 29. Defendants frequently failed to furnish the California subclass members with
2 an itemized statement in writing on their paydays that accurately showed their gross and net wages
3 earned, total hours worked, the number of piece-rate units earned and any applicable piece rate, all
4 applicable hourly rates in effect during the pay period and the corresponding number of hours worked
5 at each hourly rate by the employees, and the name and address of the legal entity that employed the
6 class members.

7 30. Defendants knew that they were required to furnish the California subclass
8 members with an itemized statement in writing showing the matters described above. Defendants
9 intentionally and deliberated failed to furnish this itemized statement in order to conceal their liability
10 from the California subclass members.

31. As a result, the California subclass members suffered injuries.

WHEREFORE, plaintiffs pray for judgment against defendants as hereinafter set forth.

SIXTH CAUSE OF ACTION
(California Subclass)
[Labor Code §203 Penalties]

32. Plaintiff incorporates paragraphs 1 through 31 as though fully set forth herein.

17 33. Upon the termination of the employment of California subclass members,
18 defendants frequently failed to pay the California subclass members all the wages that were due.

WHEREFORE, plaintiff prays for judgment against defendants as hereinafter set forth.

PRAYER

Plaintiffs pray for judgment as follows:

24 1. For the payment of the wages due on the first, second, and third causes of
25 action;

26 2. For the payment of one additional hour of pay for each violation on the fourth
27 cause of action;

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- 1 3. For the payment of the penalties described in Labor Code §226(e) on the fifth
- 2 cause of action;
- 3 4. For the payment of the penalties described in Labor Code §203 on the sixth
- 4 cause of action;
- 5 5. For interest due;
- 6 6. For declaratory and injunctive relief;
- 7 7. For reasonable attorney's fees and costs; and
- 8 8. For such other and further relief as the Court may deem proper.

DATED: February 15, 2007

HERRON & HERRON

By: *Joseph Clapp /s/*
JOSEPH CLAPP, ESQ.
Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury.

DATED: February 15, 2007

HERRON & HERRON

By: *Joseph Clapp /s/*
JOSEPH CLAPP, ESQ.
Attorneys for Plaintiffs

UPS Freight/pld/Complaint